

**The CASE of the EARL of MACCLESFIELD, against Mr. John Starkey, who while he served as a Jury-Man, published a malicious Libel against the said Earl and others, contrary to Law, and all Pretence of Colour from the Office of Jury-Man.**

*Gerard (Charles) First Earl of Macclesfield*

**Mr. STARKEY and others of the Grand Jury at Chester, Mich. 1683, subscribed and published a form of a Presentment in Paper, brought them ready drawn by five of their Fellows, in the Words following.**

**W**E the Grand Jury sworn to enquire for the Body of the County of Chester at the Assizes held in the Common Hall of Pleas in the Castle of Chester, upon Monday the 17th Day of September, in the 35th Year of his now Majesties Reign, and in the Year of our Lord, 1683, having heard his Majesties Declaration to all his loving Subjects, concerning the treasonable Conspiracy against his sacred Person and Government, lately discovered, openly read to us in Sessions by order of the Court, as well as in our respective Parish-Churches by Royal Command, and seriously considering the Extensiveness of the said Conspiracy, and dreadful Consequences thereof, had it taken effect, since Notions of Sedition and Rebellion have been cultivated to such an amazing Height, that some have not only dared to draw them into Practice in their Lives, but to propagate them with their latest Breath, by devilish Insinuations of their Consistence with Religion and Law. We conceive it high time to manifest our Separation from such Persons and Principles, their Favourers and Abettors with the Detestation of that dreadful Climax, the Bill of Exclusion, treasonous Association, Ignoramus Juries, and seducing Perambulations, by which the Accomplices advanced towards their intended Assassination and Massacre, which barbarous Design it cannot be imagined that forty, or the Council of any six durst undertake without confident Reliance on Confederate Auxiliaries; and not knowing the Latitude of such dire Combinations, but heedful to our present Charge and Duty, with the indispensable Obligations the Oaths of Allegiance and Supremacy lay upon all; We hold our selves bound in this distempered Juncture of Affairs, to present that we have strong Apprehensions of Danger from a dissatisfied Party in this County, who not only shewed their Defection openly by an Address made to Henry Booth Esq. and Sir Robert Cotton Knight and Baronet, at the last Election of Knights of the Shire, tending to alter the Succession of the Crown, with other dangerous and seditious Purports, giving Assurance of standing by them in that Design without respecting their Oath of Allegiance to the King and his Heirs, but also by their several Meetings and Cabals since, which administer greater Suspicion from the store of Arms many of them were provided with, and for that the same Persons unanimously assembled with

Schismatics, and disaffected in the publick Reception of *James Duke of Monmouth*, who has appeared a prime Confederate in the late treasonable Conspiracy, the Concourse of armed Persons then attending him, especially in and near several populous Towns in this County, where they invited and instigated the Rabble in a broad Mixture of various Sectaries with superfluous Joy and popular Noise tumulted on that occasion, has had an evil Influence on this yet unsettled County, and brought a Terror upon his Majesties good and peaceable Subjects. For Remedy whereof, with Relation to the publick Peace, and, to prevent as far as in us lies, the spreading of such Contagion, as also to wash our Hands from all Misprision by concealing Proceedings that may encourage greater Evils in other parts of his Majesties Dominions, We conceive it expedient that the principal Persons who promoted the aforesaid seditious Address, and also those who were notorious in Comforting, Aiding and Abetting in the routous Reception and Entertainment of the said Duke of *Monmouth*, and his Associates in this County, together with the Frequenters of Conventicles, and those that harbour and countenance any Nonconformist Minister or Preacher, should be obliged to give Security of the Peace, and particularly *Charles Earl of Macclesfield*, *Richard Lord Colchester*, *Charles Lord Brandon*, *Henry Booth Esq;* *Sir Robert Cotton Knight* and *Baronet*, *Sir Willoughby Aston Baronet*, *Sir Thomas Manwaring Baronet*, *Sir Thomas Bellet Baronet*, *Sir John Crew Knight*, *Nathaniel Booth Esq;* *Colonel Thomas Leigh junior*, *John Manwaring of Baddily Esq;* *Peter Leigh of Booths Esq;* *Colonel Roger Whitley of Peel*, and *Mr. Thomas Whitley his Son*, *Roger Manwaring of Kermincham Esq;* *Tilston Bretton of Stapleford Esq;* *Sir Robert Duckensfield Baronet*, *Thomas Lea of Dervnehal Esq;* and *Mr. Robert Hyde of Cottenhall*, *Edward Glegge of Grange Esq;* *Richard Leige of High-Leige Esq;* *Mr. Roger Whitley*, *Mr. Robert Venables of Winchcombe*, *William Manshull of Nampwich Esq;* *John Hurlestone of Newton Esq;* and *Charles his Son*, and *William Whitmore of Thurstaston Esq;* We also present that all Persons not frequenting the Church according to Law, are Recusants, it being impossible to know the Hearts of Men, for what cause they refuse to come to Church, and that all Connivance and Indulgence in that case is the ready Road to Rebellion, Popery and Arbitrary Power. And further we desire humbly to present to his most sacred Majesty our repeated Congratulation of Joy for his and his Royal Brother's happy Deliverance from the late treasonable Conspiracy, with our Assurances, that we will with our Lives and Fortunes stand in Defence of his sacred Person and Government, his Heirs and lawful Successors, to all which we subscribe our Names.

**I**N this Presentment twenty eight Persons not the least considerable in their Country, as appears by their Names, are by this State-Jury mark'd out as Conspirators against the Life of the then King, and as if they had shewed an open Defection from their Allegiance; nay the *Jury-Menturn Evidences*, and say they present these to wash their Hands from all Misprision.

The Earl of *Macclesfield* finding himself scandaliz'd to the highest degree, brought his Action for this against the Defendant in the Exchequer: The Plea was, That he did nothing but as a *Grand-Jury-Man*, in pursuance of the Articles given in charge, and according to the Evidence against the Earl.

The contrary to this appears upon the Presentment it self, there being nothing in it so directly laid against the Earl, that he could take Issue upon it, and therefore he, as he had reason, demurr'd to the Plea; yet Judgment was given for the Defendant through the Solicitations of *Graham* and *Burton*, who undertook the Defence as the King's Cause, for which considerable Sums of Money issued out of the Exchequer, as appeared by their Books produced before the late House of Commons.

The Hardship of which Judgment, and the Consequences of it in relation to all the Peers of *England*, are now submitted to their Considerations.

Mr.





Mr. Starkey in his printed Case says, *Whether the Fact were true or false, will not alter the Case, being according to the Evidence given before them.* But if it were false, and without Evidence given, no doubt it will be a great Inducement to the Lords to relieve a Member of their House, if they can do it by Law, lest themselves should suffer in the like Case.

It is in Proof that no manner of Evidence was given before the Jury against more than one, that Evidence very insignificant, and yet even that was afterwards manifestly known to be false.

Besides there is full proof that this Presentment proceeded from a Conspiracy between Jefferies, then Chief Justice of Chester, who brought it from London ready drawn, and five of the Jury, who manag'd the rest, threatening some, and prevailing upon others with the Name of Loyalty, for which end they brought a Message from Jefferies, that it was expected for the King's Service.

Nor were they satisfied in presenting this Libel as their Act, but published it to several others not of the Jury, and procured their Hands to it, but being so far sensible of their Error, had it writ over again, leaving out the other Hands. These things make it demonstrable that the pretence of being Jury-men, cannot give any colour to what they did.

And the Fact arising within the County, upon which they grounded their Presentment, makes the Malice of it undeniable. As to the Suggestion of great quantities of Arms, it was so far from true, that not above two hundred were seized upon the most diligent search.

The real grounds were no more, than that the Duke of Monmouth had great Respect paid him, upon his coming into the Country in a peaceable manner, being accompanied by most Persons of any Consideration: and when the present Lord Delamere was chosen for the Shire, a Paper without any Hands to it, was delivered him, the Original or true Copy of which they never saw, wherein he was desired, as Representative of the County in Parliament, to vote for excluding a Papist from succeeding to the Crown; which Paper is fully justified by the Bill of Rights, declaring it inconsistent with the Safety and Welfare of this Protestant Kingdom, to be governed by a Popish Prince.

How innocent soever these Particulars were, so blind was their Malice against the said Earl, that they inserted his Name, though he had no Share in either of them, and only entertained the Duke of Monmouth at his House: But indeed their Malice to him was not singular; for some others in the Presentment were not in the Country when those things hapned, which they would improve into Treason.

It appears upon the face of the Presentment, that it was nothing more than an Effect of the Design then carried on by Papists, and others in conjunction with them, to make distinctions of Parties among Protestants, and to expose and oppress them who appeared most forward in asserting the Religious and Civil Rights of the Nation, and whose Interest in their Countries made them formidable to the Conspirators.

This their Presentment was without Precedent, but from one of the like birth about that since in Northampton-shire, has no Foundation in Law, and is manifestly contrary to the Duty of a Grand-Jury-man. For,

1. Here are many false and scandalous Matters maliciously insinuated, as Causes of requiring Sureties of the Peace from the Persons presented; and yet there is no direct Charge, which ought to be contained in every Presentment; and the want of it makes this a plain Libel, designing only to defame, and to encourage false Witnesses against some of the Persons presented, who were then Prisoners in the Tower.

2. All criminal Matters found by a Jury, ought to be by Indictment, upon Record in some Court, that the Party accused may have means of Acquittal.

3. Sureties of the Peace ought not to be required of any, especially a Peer of the Realm, but where an actual breach of the Peace, or some Crime of an higher Nature, is positively sworn.

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4. Though *Jury-men* may determine Matter of Law, as it is coupled with Fact, in Evidence before them, they ought not to pronounce Sentence for Punishment of any Fact, as here they do in requiring Sureties of the Peace, though no Fact is directly laid against the said Earl and others.

If the Earl of *Macclesfield* should not be reliev'd in this Case, it would be an Encouragement for *Grand-Juries* to libel any Peer in disfavour with his Prince, as often as they shall be incited to it by *Designing-Men*. And what is now the Case only of one *Earl*, may be the Case of any or all the Protestant Peers of *England*, if they should have the unhappiness to live in such Times as we are but lately delivered from.

Not could the making an Example of a *Grand-Jury-Man*, who has so evidently gone beyond his Office, to serve a Turn against a *Peer*, in the least discourage others from finding *Indictments* against Peers upon positive Proof, or such as seems positive to them.

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